

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

1) JOSE RAMIREZ-BAEZ
a/k/a Casque
(Counts One and Two)
2) ETANISLAO VALENZUELA
a/k/a Chupa, Chupacabra
(Counts One and Two)
3) EDWIN GONZALEZ
(Counts One and Two)

CRIMINAL 04-0104CCC

Defendants

SENTENCING FINDINGS

On September 28, 2007, the Court of Appeals entered judgment on the appeals raised by defendants Edwin González and Estanislao Valenzuela affirming their convictions for conspiracy to possess with intent to distribute illegal drugs but remanding for resentencing as to the overt act that took place on May 19, 2003 given that the government conceded in its brief that it involved purported marijuana and not purported heroin as originally charged in the indictment. The Court of Appeals also noted that as to the amount of purported marijuana smuggled during that May 2003 incident there were references in the records and briefs both to five pounds and five kilograms, and left to this Court the task of clarifying the weight of the purported marijuana involved.

Having again reviewed the trial evidence, we find that although the testimony of the government agents in relation to that May 19, 2003 overt act was that they had prepared a bag with five kilos of simulated heroin inside, they also testified that when drug traffickers speak about pounds they refer to marijuana and when they talk about kilos they refer to heroin or cocaine. The government has already conceded on appeal that the substance involved in the May 19, 2003 incident was purported marijuana. In addition, in a recorded conversation between the cooperating defendant, José Ramírez-Báez, and a confidential

informant, Vanessa Maldonado, after delivery of the bag with drugs on May 19, 2003, they referred to the weight of the substance in pounds. Thus, given the government's concession that the amount involved in the May 19, 2003 incident was purported marijuana, the testimony by government agents that weight in pounds is used by drug traffickers to refer to marijuana, and the conversation between the informant and the cooperating defendant where they talked about the substance's weight in terms of pounds, we have little trouble concluding that the amount of purported marijuana involved in that May 19, 2003 was five pounds. Accordingly, both defendants Edwin González and Etanislao Valenzuela will be sentenced as to the May 19, 2003 incident based on that amount of five pounds of purported marijuana.

While that is the only incident of drug smuggling in which defendant González participated and for which he may be sentenced, defendant Valenzuela is also accountable for sentencing purposes for the amount of cocaine he smuggled with cooperating defendant Ramírez-Báez on other occasions during the span of the conspiracy for which he was charged and convicted. The Court had already determined back in August 1, 2005 (docket entry 192), based on the testimony of co-defendant Ramírez-Báez, that Valenzuela assisted him in the smuggling of at least thirty-eight kilograms of cocaine. Thus, these 38 kilograms of cocaine must be added to the 5 pounds of purported marijuana smuggled by Valenzuela on May 19, 2003.

Thus, pursuant to section 2D1.1(c)(15) of the advisory Sentencing Guidelines, the amount of 5 pounds of marijuana, or 2.27 kilograms, which defendant González smuggled has a base offense level of 10. On the other hand, the amounts smuggled by defendant Valenzuela, i.e. 38 kilograms of cocaine and 5 pounds of marijuana, which convert to 7,602.27 kilograms of marijuana under the Drug Equivalency Table contained in Application Note 1 to U.S.S.G. §2D1.1, have a base offense level of 34 under section 2D1.1(c)(3). There being no other applicable adjustments under the advisory Guidelines, defendant's total offense levels are 10 for González and 34 for Valenzuela.

SO ORDERED. At San Juan, Puerto Rico, on November 29, 2007.

S/CARMEN CONSUELO CEREZO
United States District Judge